

ORDINANCES #1 AND #2  
ARDEN SAFETY CODE

Ordinance #1 was adopted in June 1968. The full text of Ordinance #1 has been lost. There exists a three page “summary” of Ordinance #1 that describes the full Ordinance as “containing 166 sections covering more than 48 pages.” The brief summaries of sections of Ordinance #1 indicate that the ordinance is a motor vehicle code. Many of the sections summarized appear to be similar to Title 21, Motor Vehicles, of the Delaware Code.

Ordinance #2, also adopted in June 1968, consists of two lines. It revises Ordinance #1 “to adjust fines to conform with the Act to Reincorporate.” The Act to Reincorporate is a reference to the State legislation that approved Arden’s current charter.

Arden’s charter authorizes Arden to enact ordinances and to appoint a police force to enforce them. The charter grants jurisdiction of offenses against Arden’s ordinances to the Justice of the Peace Court nearest to Arden, subject to the limitations that fines may not exceed \$100 or imprisonment for more than 30 days.

Title 21 of the Delaware Code, relating to operation of motor vehicles, provides that, “local authorities [includes Arden], except as expressly authorized by law shall not enact or enforce any rules or regulations contrary to this chapter. [Title 21, Chapter 41 Rules of the Road] Traffic ordinances and regulations adopted by local authorities, and substantially conforming to the sections of this chapter, shall have the same force and effect as the traffic laws of this title.” Section 4101. No definition of “substantially conforming” is provided. Presumably, the reasons for these limitations on local authorities include promoting uniformity of traffic laws in different jurisdictions to help motorists to comply and law enforcement agencies to enforce traffic laws.

Because we do not have the text of Ordinance #1, it will be necessary to repeal Ordinances #1 and #2. Should we replace them? If so, what should we replace them with?

Ordinance #1 apparently sets forth in the Ordinance all or selected provisions of State law in effect at the time of adoption of the Ordinance. That approach ensures uniformity of State and Arden laws to promote compliance and simplify enforcement. A simpler approach would be to incorporate all of the provisions of Chapter 41 as from time to time amended. This approach was followed by the City of New Castle. It ensures uniformity and avoids the need to monitor changes to Delaware laws to ensure Arden’s safety ordinance is not contrary to Delaware law and the need when the State makes changes to Chapter 41 to amend Arden’s safety ordinance to make it compliant. [Note: The sense of Chapter 41 is that applies everywhere in Delaware, including Arden, but it does not expressly say that].

But there could be some provisions of Chapter 41 that do not address appropriately Arden’s particular situation. Speed limits is one and parking another. There may be others.

The State law, Chapter 41, Section 4169, provides for a 25 mph speed limit in a residential district. Arden has adopted a 20 mph limit everywhere except on Harvey Road. See the summary of Ordinance #1, Section 408.1. Chapter 41, Section 4170 provides:

“Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that the absolute speed permitted under this chapter is greater than is reasonable or safe under the conditions found to exist, such local authority, subject to subsection (c) of this section, shall determine and declare a reasonable and safe absolute speed limit, which shall be effective when appropriate signs giving notice thereof are erected.”

It would be appropriate for Arden to include the 20 mph speed limit in any amendment or replacement for Ordinance #1, if the stipulated conditions are met.

Arden’s parking ordinance, Ordinance # 13, and its ordinance on mini-bikes, Ordinance #9 will be addressed separately.

*Recommendations:*

- 1. Conduct a more detailed review of Ordinance #1 to see if there are other provisions that are specific to Arden that need to be addressed in any amendment or replacement of Ordinance #1.*
- 2. Consider an amendment to Ordinance #1 deleting the text in its entirety and replacing it with an incorporation by reference of Title 12, Chapter 41, of the Delaware Code “as from time to time amended.” Repeal Ordinance #2.*
- 3. Determine whether the conditions in Section 4170(a) to the adoption of the 20 mph speed limit have been met.*
- 4. Amend the charter to remove the \$100 limit on fines and penalties.*